Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
KEY COMMUNICATIONS, LLC, and	)	CC Docket No. 94-102
KEYSTONE WIRELESS, LLC	)	
	)	
For Waiver of Deadlines for Implementation	)	
of Phase II E911	)	

To: The Commission

NEW PETITION FOR WAIVER OF DEADLINES
FOR IMPLEMENTATION OF PHASE II E911

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June 6, 2005

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SUMMARY

Key Communications, LLC ("Key") and Keystone Wireless, LLC ("Keystone") (collectively, "Petitioner-Small Carriers") seek a waiver of their current E911 implementation deadlines for the sale of GSM technology A-GPS handsets in their respective markets, on the ground that no such handsets are currently available. Petitioner-Small Carriers originally had elected to implement a handset-based solution. Subsequently, when it appeared that there was no exclusively-handset-based solution in the offing, Petitioner-Small Carriers shifted their plans, aiming toward a hybrid solution which Nortel Networks is claiming to have in development. All of this is a matter of public record, and was recounted by the Commission in its *Order*, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, ___ FCC Rcd. ____ (FCC 05-79, released April 1, 2005) ("*Tier III Order*"), at ¶¶ 125-29.

As recently as May 12, 2005, Petitioner-Small Carriers were invited by Nortel to participate in a conference call concerning the status of the "assisted GPS" ("A-GPS") handsets for the hybrid system. However, in fact there are no such handsets on the market, and none currently in development that could replace the current inventory of non-A-GPS handsets. Petitioner-Small Carriers have been whipsawed by the manufacturing community, and cannot meet the looming July 1, 2005 deadline to commence selling these non-existent customer units. Because a network-based solution would not come near the required location accuracy levels demanded by Phase II E911, Petitioner-Small Carriers currently have no viable technology path to Phase II. They must consult with the Commission staff, and likely with their PSAP counterparts, to determine how best to proceed, as once they spend huge sums on one solution, such funds become unavailable to implement any other solution.

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To: The Commission

NEW PETITION FOR WAIVER OF DEADLINES
FOR IMPLEMENTATION OF PHASE II E911

Key Communications, LLC ("Key") and Keystone Wireless, LLC ("Keystone") (collectively, "Petitioner-Small Carriers"), by their attorneys, hereby submit this New Petition for Waiver of Deadlines for Implementation of Phase II E911 ("2005 Petition"). Petitioner-Small Carriers had previously filed a petition for waiver of certain E911Phase II deadlines, which, as supplemented, was granted in part by the Commission earlier this year.[1] However, since the release of the *Tier III Order*, new developments have upset the efforts of Petitioner-Small Carriers to meet the revised deadlines set forth therein, prompting this 2005 Petition seeking additional relief.[2]

As set forth below, the handset manufacturing community now advises that there will be no A-GPS handsets available by the looming July 1, 2005 deadline or anytime soon thereafter. Moreover, after having put considerable time and effort into the study of a potential hybrid (part network-based, part handset-based) system that was being developed by Nortel, it now appears

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[1] *See Order*, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, ___ FCC Rcd. ____ (FCC 05-79, released April 1, 2005) ("*Tier III Order*"), at ¶¶ 125-29.

[2] All facts set forth herein and not susceptible to official notice are supported by the attached declarations of Dennis Bloss, Key's general manager, and James Stec, Keystone's general manager, and the exhibits to those declarations.

that without the handset-based component of the so-called "hybrid", that system is only marginally more accurate than ordinary Phase I E911, and spending scarce capital resources to implement only the network portion of the hybrid would be no significant improvement, location-wise, over Petitioner-Small Carriers' current Phase I E911 facilities. Accordingly, Petitioner-Small-Carriers have no choice but to seek a further extension of the deadlines.

BACKGROUND

In their first waiver petition which was the subject of the *Tier III Order, supra*, Petitioner-Small Carriers explained that Nortel Networks, a major wireless infrastructure manufacturer, was claiming to be developing an alternative location technology for GSM wireless systems, which alternative technology might provide an E911 Phase II solution for rural markets – specifically, Nortel's hybrid network/handset-based technology, called "Timing Advance/Network Measurement Report" positioning ("TA/NMR"). According to Nortel, implementation of TA/NMR would involve two components, one of them network-based and the other handset-based. With respect to the handset-based aspect, Nortel envisaged special "assisted-GPS" ("A-GPS") handsets, which at that time were, according to Nortel, still in development and thus not available.

Nortel advised Petitioner-Small Carriers that it did not begin testing the TA/NMR technology and the A-GPS handsets until the latter part of 2004, and that it had not yet completed its tests of the A-GPS handsets (implying it had started those tests). Nortel told Petitioner-Small Carriers that it anticipated that A-GPS handsets would be available to large carriers within the first quarter of 2005, and to Tier II and Tier III carriers in the second quarter of 2005. Based upon this information, the Commission, in the *Tier III Order, supra*, granted Petitioner-Small Carriers until July 1, 2005 within which to begin selling A-GPS handsets, on which day at least 25% of all new handsets activated were to be A-GPS, with concomitant

extensions of the remaining handset benchmarks. *Id.*, at ¶ 127. The Commission denied as premature Petitioner-Small Carriers' request for relief from the accuracy requirements, on the ground that until there were substantial numbers of A-GPS handsets circulated within the subscriber population, one could not assess the need for relief. *Id.*, at ¶ 129.

As Petitioner-Small Carriers explained in their prior waiver petition, they serve only less dense markets, where a network-based solution is not possible, due to the unavailability of sufficient cell density to support triangulation.[3] Thus, some sort of handset-based or hybrid-based solution is the only path they can potentially pursue and ever hope to comply with the Commission's Phase II accuracy requirements.[4]

[3/] In addition to the relative lack of cell density, Petitioner-Small Carriers serve very mountainous areas in West Virginia (Key) and Pennsylvania (Keystone). The mountainous nature of the terrain also hinders the ability to increase location accuracy using network-based solutions. Were Petitioner-Small Carriers to purchase and install either a full-blown network-based solution or the network portion of the Nortel hybrid solution, such an expenditure would only improve location accuracy to approximately a three kilometer radius. While this is slightly better than Phase I accuracy (as most cells have a reliable coverage contour with a radius greater than 3 kilometers), it is not enough of a difference to be meaningful in those cases where the emergency caller does not know where he/she is located.

[4] To emphasize, Petitioner-Small Carriers have installed and currently operate E911 facilities – such facilities remain Phase I at this time, for the reasons set forth in the text. However, as the embedded investment in Phase I facilities demonstrates, Petitioner-Small Carriers have been and remain willing to spend the necessary funds to provide enhanced emergency services, if the expenditure will truly result in a benefit to the public, and not merely to an infrastructure manufacturer.

Nortel had previously advised that Nortel would not itself be making these handsets, but that Nortel was working with Nokia and Motorola, which handset manufacturers had now (according to Nortel) agreed to make and sell A-GPS handsets compatible with the Nortel TA/NMR hybrid infrastructure system. Petitioner-Small Carriers then immediately approached Nokia and Motorola, beginning in the autumn of 2004, to seek to acquire such GSM A-GPS handsets for dissemination to the subscriber base.

At first, neither Nokia nor Motorola denied working with Nortel, and neither denied being in development of a GSM technology A-GPS handset. Accordingly, Petitioner-Small Carriers attempted to place orders for such handsets on the assumption that development would soon be complete, but were told that orders could not be placed until development was complete.

Following the release of the *Tier III Order*, Petitioner-Small Carriers immediately began pressing for A-GPS handsets to make available to subscribers.

Petitioner-Small Carriers sent Key's general manager, Dennis Bloss, to a Motorola GSM seminar in Illinois in April, 2005, following release of the *Tier III Order*, to learn the latest in technology developments, including everything possible about the Motorola A-GPS handsets and the use of such handsets as part of a larger unit-location system. It was at that seminar, on April 19, 2005, that Mr. Bloss was told by Motorola representatives that Motorola in fact is *not* developing any GSM technology A-GPS handset for release in any identifiable time frame, and even then, that the only phone potentially in development that might have such features is a phone that would sell at *wholesale* for $700. On the heels of this news, Petitioner-Small Carriers finally received a response, May 23, 2005, to their constant inquiries to Nokia – Nokia has no plans to develop any GSM technology A-GPS handsets whatsoever.

In short, Petitioner-Small Carriers have been whipsawed by the manufacturing community.[5] With almost no time remaining before the upcoming deadline to begin marketing A-GPS handsets, they are suddenly told there are no such A-GPS handsets in existence or in development!

Patently, given their limited capital resources, Petitioner-Small Carriers have to consult with the Commission staff in advance of making decisions, to determine what step the staff believes Petitioner-Small Carriers should take next. Should they purchase and install network-based equipment, in full knowledge that such equipment will not make any significant improvement in location accuracy due to the limited instances of triangulation capability (and that purchase of such equipment now will foreclose the financial capability of purchasing any other technology in the future)? Should they instead purchase and install the network portion of a TA/NMR hybrid system that, based on their investigation to date, will make no significant improvement over Petitioner-Small Carriers' current Phase I facilities (which purchase, likewise, would foreclose the financial capability to purchase some other future Phase II technology for rural areas), in the bare hope that some handset manufacturer in the indeterminate future will relent and develop a GSM technology A-GPS handset compatible with Nortel? Should they try to band together with other rural GSM carriers to develop a single purchasing entity for

[5] To illustrate, attached to the Bloss declaration is a copy of an e-mail from Nortel to several Key and Keystone personnel (including Mr. Bloss), dated May 13, 2005, entitled "Motorola AGPS Handset Update" and inviting the e-mail recipients to participate in a conference call to hear a report from Nortel which "will present the latest information from Motorola on AGPS handsets, . . ." Patently, if Nortel was providing such claims of Motorola involvement in writing as of May 13, 2005, it was doing the same orally on a continuous basis prior thereto.

acquiring GSM technology A-GPS handsets, and hopefully thereby achieve the necessary critical mass to entice a manufacturer into spending the funds to develop such a device?[6]

The vast majority of the PSAPs within the service areas of Petitioner-Small Carriers are not ready yet for Phase II E911 – only a few have even sent notice requesting an upgrade to Phase II. As yet, there is no cost recovery system in place in either Pennsylvania or West Virginia, so the entire cost of any Phase II E911 facilities would have to be advanced by Petitioner-Small Carriers themselves. Neither Key nor Keystone has the financial wherewithal to install one kind of Phase II solution now and a different, more accurate solution two or three years down the road. Therefore, Petitioner-Small Carriers are extremely leery of spending large capital sums on something that would provide only the slightest marginal improvement over Phase I – doing so would preclude them from spending anything at all on a real rural solution if one is developed at about the same time that the bulk of their PSAPs will finally be ready to use Phase II information.

Petitioner-Small Carriers have, through counsel, attempted to schedule a meeting with the staff of the Wireless Telecommunications Bureau to explore which approach, if any, would be deemed appropriate. However, no matter which path they decide to pursue, there is no possibility they could begin supplying A-GPS handsets on July 1, as such handsets simply do not and will not exist anywhere in the near future.

RELIEF BEING REQUESTED

Petitioner-Small Carriers hereby request that their deadlines for compliance with the requirements of Phase II of the Commission's Rules be extended as follows:

October 1, 2006 – Begin selling A-GPS handsets

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[6] Such a hypothetical collective purchasing entity raises very serious antitrust concerns, and to the knowledge of Petitioner-Small Carriers, there is no antitrust exemption for E911

January 1, 2007 – 25% of handsets activated are A-GPS

April 1, 2007 – 50% of handsets activated are A-GPS

July 1, 2007 – 100% of handsets activated are A-GPS

January 1, 2008 – 95% of the subscriber base has A-GPS handsets

In addition, Petitioner-Small Carriers would be relieved from having to meet the accuracy requirements of Phase II E911 until the later of: a) July 1, 2007; or b) six months after disposition of any petition for relief filed during a two-month window beginning three months after they begin distributing A-GPS handsets.

As discussed above, Petitioner-Small Carriers have no assurance that any handset manufacturer will decide there is a sufficient demand to warrant the development of a GSM technology A-GPS handset at any time in the future, so there is a distinct possibility that even if the above relief were granted, appropriate handsets still would be unavailable as of the new deadlines. If Petitioner-Small Carriers are unable to meet some portion(s) of the above revised timetable due to causes beyond their control, Petitioner-Small Carriers request the right to seek concomitant adjustments to the E911 waiver relief afforded. Petitioner-Small Carriers would agree to file quarterly interim reports with this Commission on the progress of their E911 Phase II efforts, as a condition to the grant of the relief requested in this 2005 Petition.

DISCUSSION

Under Section 1.925(b)(3) of the Commission's Rules, it is appropriate to grant a waiver of the rules where:

> (i) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

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problems.

(ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

Under the facts as set forth above, Petitioner-Small Carriers have met the standards for grant of the requested waiver.

I. The Underlying Purpose of Section 20.18 Is Not Served by Applying It Here

The underlying purpose of section 20.18 of the Commission's Rules is to enhance the safety of mobile telephone users, by enhancing their ability to obtain emergency relief through their mobile phones. Thus, where imposition of the time deadlines of that rule would detract from the safety of mobile phone users, the underlying purpose of the rule is frustrated, and waiver is appropriate.

Section 20.18 contemplates various degrees of enhanced 911 service to mobile phones. Indeed, the greatest increase in safety is provided by the move from ordinary 911 service to Phase I E911. Phase I allows a user to telephone 911, and have his/her call-back number and the cell in which the caller is located automatically transmitted to the PSAP. Since most callers know where they are and can tell the PSAP operator, the main benefit comes from delivery of the caller's phone number, which enables the PSAP operator to call the mobile phone back if the call is dropped. This is a huge benefit to the public over not having the ability to maintain contact with the PSAP in emergencies.

Phase II represents an improvement over Phase I, in that with Phase II, even that small minority of callers who do not know or cannot relay their location can nonetheless have their location relayed automatically to the PSAP. However, for the majority of mobile phone users, Phase II represents at most only a slightly incremental benefit over Phase I (as opposed to the vast benefit of Phase I over nothing), because the automatic location capability becomes relevant only in that small minority of cases where the caller cannot manually report his/her location.

In major urban areas, there are no "unserved areas" without reliable wireless service – the carrier's footprint covers everything, and the demand for new cell sites is to "fill-in" dead spots, not to expand footprint. That is why there are so many cells so densely constructed in major urban areas, and why network-based E911 solutions make such good sense there, both economically and operationally. Conversely, in more rural areas, there do remain unserved areas outside the carrier footprint but within the authorized geographic market. In such cases, public safety is best served by the carrier placing new cell sites in new areas, *i.e.*, increasing its footprint into previously unserved areas, because there is more benefit to providing *some* sort of 911 service to areas that otherwise have none at all, than there is to incrementally enhancing the 911 service already available in central core areas. Accordingly, carriers large and small will spend their limited capital resources on putting additional cell sites in outlying areas in rural markets, rather than duplicating existing coverage via construction of multiple "fill-in" cells.

As discussed above, the only possible way for Petitioner-Small Carriers to meet the requirements of the rule at this time would be to construct multiple "fill-in" cells within their existing coverage footprints for the sole purpose of achieving the cell density to support triangulation and a network-based solution. Such new fill-in cells would carry virtually no revenue-generating traffic, as Petitioner-Small Carriers do not have any current capacity constraints or significant dead spots. Petitioner-Small Carriers would be spending capital resources for non-revenue cell site infrastructure, as well as working capital for monthly site rent, all for no reason other than to aid the tiny minority of E911 users that cannot manually relay their location to PSAP operators. As a result, Petitioner-Small Carriers would have no resources

available to construct cell sites in areas currently unserved, and users traveling in these unserved areas would continue to have no 911 service available whatsoever.[7]

Thus, the underlying purpose of the rule, to enhance public safety, is undermined by strict enforcement of the rule in this instance.

II. Strict Enforcement of the Rule Would Be Unduly Burdensome and Inequitable

Patently, where, as here, there simply are no A-GPS handsets being manufactured, and none are available to Petitioner-Small Carriers, it would be "unduly burdensome" to require Petitioner-Small Carriers to do the impossible. This is not an instance where Petitioner-Small Carriers have made some sort of business decision, or had any control over the situation. Rather, they were assured repeatedly by Nortel that A-GPS handsets would be available timely for them to acquire and distribute to their subscribers, and those assurances have turned out to be false. Accordingly, a waiver of the rule would be appropriate for this reason alone.

Aside from being unduly burdensome, enforcement of the rule here would be inequitable. Petitioner-Small Carriers are doing everything that larger carriers do to comply with §20.18(h) of the rules. A large nationwide carrier serves both densely populated areas and rural areas. Such a carrier can always exceed the 67% and 95% accuracy thresholds in the more densely populated areas, while achieving much lower accuracy in the rural areas it serves because of low population density, topography and cell spacing (*i.e.*, absence of triangulation ability). Unlike Tier III rural carriers, however, a large nationwide carrier would be able to claim compliance with the requirements of §20.18(h). On a blended average, given the higher 911 call volume in dense

[7] Notably, it is precisely these more remote areas that generate a higher percentage of 911 calls (as a percentage of overall cell minutes), because there is less likely to be police patrols or other assistance capabilities in the absence of 911 service. In contrast, where an emergency develops in a central core area, it is often noted by authorities even in advance of any 911 call.

urban areas, a nationwide carrier can meet the 67% and 95% accuracy levels, even if its accuracy in rural areas is far less.

To deny the requested waiver is tantamount to unduly discriminating against Petitioner-Small Carriers just because they are not nationwide carriers, and therefore inequitable.

III. Grant of the Requested Waiver Is in the Public Interest

If the requested waiver is not granted, Petitioner-Small Carriers will have no way to comply as of July 1, 2005, since their failure to comply is due entirely to circumstances beyond their control. For the Commission to try to impose a forfeiture in such circumstances would be a waste of resources for both the Commission and Petitioner-Small Carriers, and would have no effect whatsoever on the likelihood of Commission licensees obeying Commission rules in the future. Where, as here, the licensees are doing everything they can to obey the rules and there is nothing more they can do, attempting to punish them will not change their future behavior, or serve as a warning to others (except to the extent it encourages others not to enter the industry).

Moreover, if and to the extent the Commission wanted to change the capital plans of Petitioners or other smaller licensees to require them to construct totally redundant fill-in cells at the expense of all other capital projects, such would run counter to the public interest. Petitioner-Small Carriers serve a valuable public function by preventing undue concentration and market power in the areas they serve, enhancing the quality of mobile telephone service and acting as a downward force in the pricing of that service, all to the benefit of the public. To require Petitioner-Small Carriers to build redundant, non-revenue generating cells in their central core areas for the sole purpose of supporting triangulation and a network-based Phase II E911 solution would likely drive them into insolvency, and eliminate their valuable presence as viable competitors. Even if Petitioner-Small Carriers could survive such a financial drain, it would eliminate their plans (and their ability) to extend their coverage footprint into the outlying

portions of their licensed geographic areas, and thereby limit the areas where 911 service is available at all. This would cause more harm to mobile phone users than such users would gain from the incremental benefit of having Phase II in central core areas of the market.

CONCLUSION

Petitioner-Small Carriers remain committed to implementing E911 Phase II capability as soon as practicable. However, Petitioner-Small Carriers cannot control the pace of equipment development. The timetable proposed herein for implementation of E911 Phase II is reasonable under the circumstances, and will serve the public interest.

Respectfully submitted,

KEY COMMUNICATIONS, LLC and KEYSTONE WIRELESS, LLC

June 6, 2005

By: _____
David J. Kaufman
Lorretta K. Tobin

Their Attorneys

Brown Nietert & Kaufman, Chartered
1301 Connecticut Ave., N.W., Suite 450
Washington, D.C. 20036
(202) 887-0600

DECLARATION OF DENNIS BLOSS

I, Dennis Bloss, hereby declare under penalty of perjury, as follows:

1. I am the general manager of Key Communications, LLC ("Key"). I, along with my counterpart James Stec, have now been given responsibilities for implementation and operation of emergency services for both Key and Keystone Wireless, LLC dba Immix Wireless ("Keystone") (collectively, "Petitioner-Small Carriers"). This declaration is being submitted in support of their "New Petition for Waiver of Deadlines for Implementation of Phase II E911" ("2005 Petition"). I have read the 2005 Petition. All facts set forth therein and not susceptible to official notice are true and correct. Without limiting the foregoing, I would add the following details.

2. Petitioner-Small Carriers are committed to providing the maximum in enhanced 911 services to their subscribers and incoming roamers. Even were this not required under commission regulations, it would be necessary from a competitive standpoint. Petitioner-Small Carriers cannot provide an inferior 911 service and expect to successfully compete. Fortunately, in the real world, their quality of 911 service is comparable to that of the other carriers in their markets.

3. Petitioner-Small Carriers had been working with Nortel and following the development of Nortel's hybrid "TA/NMR" approach for almost two years. According to Nortel, that approach was going to produce substantial quality enhancements from both the network and the handset side. However, based upon the material and information provided to Petitioner-Small Carriers to date, the network side of the TA/NMR system is only a marginal improvement over ordinary Phase I E911. Therefore, TA/NMR remains little more than a glorified handset-based concept, contrary to what Nortel had led Petitioner-Small Carriers to believe when it provided the marketing and technical materials which Petitioner-Small Carriers submitted to the Commission (under cover of a confidentiality request) on December 10, 2003.

4. The shortcomings of the network side of the Nortel hybrid approach would be irrelevant if Nortel, in cooperation with handset manufacturers, succeeded in developing a special "assisted-GPS" ("A-GPS") handset which would provide enhanced location capability, something which Nortel has continually assured Petitioner-Small Carriers to be the case. Nortel had repeatedly advised Petitioner-Small Carriers that Nortel was working with Nokia and Motorola to develop the A-GPS handset. Initially, neither Motorola nor Nokia denied that assertion. (To the extent that those manufacturers declined to confirm the assertion, Petitioner-Small Carriers reasonably assumed that the silence was a function of confidentiality concerns while the product was in development.)

5. Following the release of the Commission's *Tier III Order* on April 1, 2005, Petitioner-Small Carriers continued to press Nortel, Motorola and Nokia for answers and for phones to be able to distribute by the July 1, 2005 deadline. I had gone to Schaumberg, Illinois April 18-19, 2005, to attend a Motorola "GSM Summit" on new technical developments in GSM, including but not limited to E911. At that conference, I met on the morning of April 19 with Scott Albright, Elise Dockery and Timothy Ryan of Motorola, and asked again about the status of

Petitioner-Small Carriers request for A-GPS GSM technology units, reminding the Motorola personnel that we needed the units immediately to meet our FCC deadline. The Motorola personnel told me there and then that Motorola is not working to develop any standard GSM phone with A-GPS capability, and that the only potentially A-GPS GSM handset on the horizon would possibly be a "do-everything" model with Blackberry, video, etc., that would sell wholesale for $700. (To understand how expensive that is, most phones wholesale for under $200, and even the new "Razor" phones wholesale for about $400.) Even as to this "do-everything" model, the Motorola personnel were unable to give me any potential timing on either its initial release (to the national carriers), much less its initial release (usually three months later) to the smaller rural carriers. This was the first indication Petitioner-Small Carriers had that the information they had consistently been receiving from Nortel was inaccurate.

6. On May 12, 2005, I, along with other representatives of Key and Keystone, was invited to participate in a Nortel conference call where, according to the invitation e-mail (copy attached hereto as Exhibit 1) Greg Burdett of Nortel would provide an update on the Motorola A-GPS handsets which would be part of the TA/NMR system. In the conference call the next day, Nortel representatives started out by assuring Key and Keystone again that both Nokia and Motorola were bringing out A-GPS handsets. In the conference call the next day, Nortel representatives started out by assuring Key and Keystone again that both Nokia and Motorola were bringing out A-GPS handsets. I then confronted them with the contrary statements I had received from Messrs. Albright and Ryan and Ms. Dockery at the Motorola GSM seminar. The Nortel personnel responded that this information is inconsistent with the information they were being given, and promised to take the matter up immediately with Nortel's liaison with Motorola on the project. They promised to get back to us immediately with more information – I am still waiting.

Executed June 2, 2005.

Dennis Bloss

DECLARATION OF
DENNIS BLOSS

EXHIBIT 1

Dennis Bloss

From: Steve McCraney [mccraney@nortel.com]

Sent: Thursday, May 12, 2005 10:57 AM

To: Greg Burdett; Anabella Arosemena; Dennis Bloss; James Williams; PCMgt_Jim_Chandler (jchandler@immix.com); Robert C Martin

Subject: Motorola AGPS Handset Update

When: Friday, May 13, 2005 2:00 PM-3:00 PM (GMT-05:00) Eastern Time (US & Canada).
Where: 866 382-4848 passcode 4558488# or 919 997-8152 (ESN 350)

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You are invited to attend a conference call to review the status of Motorola AGPS handsets. Greg Burdett of Nortel will present the latest information from Motorola on AGPS handsets, and Nortel's involvement in interop testing, etc.

Regards,

Steve McCraney
Sales - Independent & Emerging Service Providers
Tel 919 380-8488
Mobile 919 280-3100

DECLARATION OF JAMES STEC

I, James (Jim) Stec, declare under penalty of perjury as follows:

1. I am the general manager of Keystone Wireless, LLC dba Immix Wireless ("Keystone"). I, along with my counterpart Dennis Bloss, have now been given responsibilities for implementation and operation of emergency services for both Key Communications, LLC ("Key") and Keystone (collectively, "Petitioner-Small Carriers"). This declaration is being submitted in support of their "New Petition for Waiver of Deadlines for Implementation of Phase II E911" ("2005 Petition"). I have read the 2005 Petition. All facts set forth therein and not susceptible to official notice are true and correct. Without limiting the foregoing, I would add the following details.

2. Petitioner-Small Carriers are committed to providing the maximum in enhanced 911 services to their subscribers and incoming roamers. Even were this not required under commission regulations, it would be necessary from a competitive standpoint. Petitioner-Small Carriers cannot provide an inferior 911 service and expect to successfully compete. Fortunately, in the real world, their quality of 911 service is comparable to that of the other carriers in their markets.

3. Petitioner-Small Carriers had been working with Nortel and following the development of Nortel's hybrid "TA/NMR" approach for almost two years. According to Nortel, that approach was going to produce substantial quality enhancements from both the network and the handset side. However, based upon the material and information provided to Petitioner-Small Carriers to date, the network side of the TA/NMR system is only a marginal improvement over ordinary Phase I E911. Therefore, TA/NMR remains little more than a glorified handset-based concept, contrary to what Nortel had led Petitioner-Small Carriers to believe when it provided the marketing and technical materials which Petitioner-Small Carriers submitted to the Commission (under cover of a confidentiality request) on December 10, 2003.

4. Attached hereto as Exhibit A is an exchange of continuing e-mails between my subordinate Kim Lapp and Rick Olivares of Nokia respecting the continuing efforts of Petitioner-Small Carriers to obtain information concerning the status of Nokia's development of A-GPS handsets, and to be allowed to place orders for such handsets. Those e-mails begin on December 22, 2004, and continue through May 23, 2005, culminating in an e-mail which attaches a letter to Petitioner-Small Carriers from Nokia dated May 19, 2005 (although, as noted, we did not receive it until May 23), which letter is attached hereto as Exhibit B. It was this letter in which Nokia finally advised Petitioner-Small Carriers that it is not developing any GSM technology A-GPS handset.

5. On May 12, 2005, I, along with other representatives of Key and Keystone, was invited to participate in a Nortel conference call where, according to the invitation e-mail, Greg Burdett of Nortel would provide an update on the Motorola A-GPS handsets which would be part of the TA/NMR system. In the conference call the next day, Nortel representatives started out by assuring Key and Keystone again that both Nokia and Motorola were bringing out A-GPS handsets. Dennis Bloss then confronted them with the contrary statements he had received at the

Motorola seminar. The Nortel personnel responded that this information is inconsistent with the information they were being given, and promised to take the matter up immediately with Nortel's liaison with Motorola on the project. They promised to get back to us immediately with more information – I am still waiting.

Executed June 2, 2005.

James Stec

DECLARATION OF JAMES STEC

EXHIBIT A

-----Original Message-----

From: Kim Lapp
Sent: Monday, May 23, 2005 7:05 PM
To: Jim Chandler
Cc: Jerry Sitko; Jim Stec
Subject: FW: GPS Handsets for E911 Phase II

Hey guys,
Let me know if this is good and if there is anyone else this needs to be forwarded to?
Thank you,
Kim

Kim Lapp
Operations Support Manager
Immix Wireless
(610) 898-1828
Fax: (610) 898-1830
Email: klapp@immix.com

-----Original Message-----
From: Rick.Olivares@nokia.com [mailto:Rick.Olivares@nokia.com]
Sent: Monday, May 23, 2005 7:02 PM
To: Kim Lapp
Subject: RE: GPS Handsets for E911 Phase II

FINALLY...attached is a document stating our plans for E911 Phase II.
Thanks for your patience.

Rick

-----Original Message-----
From: ext Kim Lapp [mailto:klapp@immix.com]
Sent: Tuesday, May 17, 2005 2:43 PM
To: Olivares Rick (Nokia-CMO/Dallas)
Cc: Jim Chandler
Subject: FW: GPS Handsets for E911 Phase II

Hey Rick,
It has been quite awhile since we talked regarding this. The last conversation we had with Jim Stec our general manager was that it was imperative that we receive some type of written statement from Nokia regarding their road map for GPS handsets for E911 Phase II. Have you been able to find anything out and if not, who do we need to escalate this to, so that we may get the needed information required by law. Please get back to us as soon as possible.
Thank you,
Kim

Kim Lapp
Operations Support Manager
Immix Wireless
(610) 898-1828
Fax: (610) 898-1830
Email: <mailto:klapp@immix.com> klapp@immix.com
-----Original Message-----
From: Rick.Olivares@nokia.com [mailto:Rick.Olivares@nokia.com]
Sent: Tuesday, April 26, 2005 9:21 AM
To: Kim Lapp
Subject: RE: GPS Handsets for E911 Phase II

Kim,
I'm trying to get something for you...answer, statement, etc. I will forward any information as soon as I receive anything.

Rick
-----Original Message-----
From: ext Kim Lapp [mailto:klapp@immix.com]
Sent: Tuesday, April 26, 2005 8:03 AM
To: Olivares Rick (Nokia-CMO/Dallas)
Subject: RE: GPS Handsets for E911 Phase II
Rick,
Any word on this? This is a hot issue here and we really need a statement from Nokia.
Thank you,
Kim

Kim Lapp
Operations Support Manager
Immix Wireless
(610) 898-1828
Fax: (610) 898-1830
Email: <mailto:klapp@immix.com> klapp@immix.com
-----Original Message-----
From: Rick.Olivares@nokia.com [mailto:Rick.Olivares@nokia.com]
Sent: Friday, April 22, 2005 2:49 PM
To: Kim Lapp
Subject: RE: GPS Handsets for E911 Phase II

I've sent your inquires to several different people, but have yet to get a response. I'm actually in the office the first part of next week and will chase down some information for you.

Rick
-----Original Message-----
From: ext Kim Lapp [mailto:klapp@immix.com]
Sent: Wednesday, April 20, 2005 3:42 PM
To: Olivares Rick (Nokia-CMO/Dallas)
Subject: FW: GPS Handsets for E911 Phase II
Rick,
Have you any information regarding this request. We are getting down to the wire and need something in writing for the FCC.
Thank you,
Kim

Kim Lapp

Operations Support Manager
Immix Wireless
(610) 898-1828
Fax: (610) 898-1830
Email: <mailto:klapp@immix.com> klapp@immix.com
-----Original Message-----
From: Rick.Olivares@nokia.com [mailto:Rick.Olivares@nokia.com]
Sent: Monday, January 03, 2005 4:04 PM
To: Kim Lapp
Subject: RE: GPS Handsets for E911 Phase II

Kim,
Well, I've forwarded your question, but have yet to get a response. I just wanted to let you know that I'm working on an answer and hope to get one to you shortly. Thanks and I hope your holidays went well.

Rick
-----Original Message-----
From: ext Kim Lapp [mailto:klapp@immix.com]
Sent: Wednesday, December 22, 2004 3:47 PM
To: Olivares Rick (Nokia-CMO/Dallas)
Cc: Strasser, Richard L.; Jim Chandler; Jerry Sitko; Jeff Murphy; Jim Stec
Subject: GPS Handsets for E911 Phase II
Rick,
We here at Immix Wireless are looking for Nokia's schedule of roll out plans for Assisted GPS handsets for E911 phase II? Also, when will these models be available in the US and for Tier III carriers? Rick, I look forward to hearing from you in the very near future. I hope that you have a happy and safe holiday.
Thank you,
Kim Lapp

Kim Lapp
Operations Support Manager
Immix Wireless
(610) 898-1828
Fax: (610) 898-1830
Email: <mailto:klapp@immix.com> klapp@immix.com

DECLARATION OF JAMES STEC

EXHIBIT B

Mobile Phone Business Unit
Jana Tate

May 19, 2005

May 19, 2005

Re: Nokia Roadmap for Assisted GPS GSM Handsets

Dear Sir/Madam:

This letter responds to your recent inquiry regarding Nokia's roadmap for Assisted GPS GSM handsets. Specifically, you have asked us for information regarding the availability of such handsets intended to meet the FCC's E911 Phase II requirements. Nokia currently does not have plans to develop A-GPS equipped GSM handsets that would meet the FCC's E911 requirements.

Sincerely,
Jana Tate
Operative Product Manger – North America
Mobile Phone Business Group